IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1998 OF 1988

1. Smt. Akkatai Rama Porwadi )
of Sankeshwar, Nadi Galli, Taluka )
Hukeri, District Belgaum. )
)
2. Shri Ganpati Rama Porwadi )
of Sankeshwar, Nadi Galli, Taluka )
Hukkeri, District Belgaum. )
[Writ Petition abates against Respon- )
-dents 1 and 2 vide Court's order )
dated 10/12/1997] )
)
3. Shripati Rama Porwadi - Patil )
since deceased through legal heirs )
)
3a. Smt. Malini Shripatrao Patil )
Age 66 years, (Widow) )
)
3b. Shri Shripad Shripatrao Patil )
Age 33 years (Son) )
)
3c. Shri Ravindra Shripatrao Patil )
Age 34 years, (Son) )
All r/o. Plot No.22/13, Sardar )
Colony, Behind Govt. Press, )
Tarabai Park, Kolhapur. )

[Amended as per court's order dated )
27.9.2007 passed in CA No.1631 )
of 2005]

4. Rajaram Rama Porwadi, )
of Kuditre, Sugar Colony, Taluka )
Karvir, District Kolhapur. )
[Writ Petition abates against )
Respondent No.4 vide Court's order )
dated 10/12/1997) ) .....Petitioners.

V/s

1. Shankar Bhima Magdum, of )
Manwad, Taluka Gandhinglaj, )
District Kolhapur . )
)
2. Ramchandra Laxman Porwadi )
of Manwad, Taluka Gadhinglaj, )
District Kolhapur. )
)
3. Rajaram Shankar Porwadi, )
)
4. Vishnu Shankar Poriwade, )
)
5. Maruti Shankar Poriwade, )
[Name of Respondent No.5 deleted )
vide Court's order dated 23/6/1989] )
Nos. 3 to 5 residing at Basarange, Bk. )
Taluka Gandhinglaj, District Kolhapur )
)
6. Shivaji Mallappa Porwadi )
of Nangnoor, Taluka Gandhinglaj, )
District Kolhapur. )
)
7. Shrimati Sharubai Mallappa Porwadi )
of Nangnoor, Taluka Gandhinglaj, )
District Kolhapur. )
)
8. Balkrishna Annappa Porewadi of )
Nangnoor, Taluka Gandhinglaj, )
District Kolhapur. ) .....Respondents.

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Mr. S.V. Sadavarte for the Petitioner.

Mr. D.A. Nalavade for Respondent No.1.
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CORAM: V.M. KANADE, J.

DATE : 10th October, 2007.

**ORAL JUDGMENT:**

1. Petitioner is challenging the judgment and order passed by the Maharashtra Revenue Tribunal in Revision Application No. MRT-KP-205/1983 whereby the MRT was pleased to dismiss the Revision Application filed by the Petitioner herein and confirm the order passed by the SDO.

2. Brief facts in nutshell are as under:-

3. The suit lands were mortgaged in the year 1921 to Shri Laxman Rama Porwade. The mortgagor, later on, leased these lands to the father of Respondent No.1 as tenant on 01.04.1957. The father of Respondent No.1 deceased Bhima Magdum was the tenant in suit lands. Initially, proceedings under section 32G were initiated. However, they were dropped by the ALT by its order dated 30/11/1962. The appeal filed by Respondent No.1's father was dismissed on 20/6/1963. In revision, MRT was pleased to remand the matter for fresh inquiry. Thereafter, fresh proceedings were initiated. The ALT fixed the purchase price in favour of Respondent No.1's father. This order was again challenged in appeal. Appeal was dismissed. Thereafter, again, Revision Application was preferred before the MRT. MRT again remanded the matter for fresh trial. After remand, the ALT again initiated proceedings under section 32G and held

that Respondent No.1 was not entitled to purchase the suit lands. Against this Order, revision application was filed under section 76-A. In revision, again, the matter was remanded to the Trial Court for fixing the purchase price of the one half area out of the suit lands in favour of Respondent No.1. Against this order, revision was filed by the present Petitioner which was also dismissed.

4. The learned Counsel appearing on behalf of the Petitioner submitted that the original landlord had sold one half of the property in favour of his wife by a registered sale deed in 1940. He submitted that the original landlord died in 1954 and she was a widow on the tiller's day. It was submitted that the original tenant expired in 1971-72 and that his son was not cultivating the land and he was permanently residing at Kalyan. It is further submitted that the original tenant was a tenant of the mortgagee and, therefore, could not have been declared as tenant of the landlord.

5. This submission cannot be accepted. The Apex Court in Dahya Lala and others Vs. Rasul Mahomed Abdul Rahim and others reported in **AIR 1964 SC 1320** has held that the tenant of a mortgagee continued to get protection under the BT & AL Act even after the mortgage is redeemed and that under the provisions of section 2(18), the tenant was defined as "an agriculturist" who holds the land on lease and includes a person who is deemed to be tenant under the provisions of

this Act. The Apex Court also in Papila Bai Vs. Chavdas T. Bhortakke (Dead) by Lrs & others reported in **2005(3) Bom. C.R. 726,** followed the ratio laid down in the judgment in the case of Dahya Lal (supra). Therefore, there is no infirmity in the order passed by the MRT. No case is made out for interfering with the order pass by the Courts below. Writ Petition is accordingly dismissed.

(V.M. KANADE, J.)